

General Information Letter: An Illinois income tax exemption is allowed for a foster child if an exemption is allowed for that child under the Internal Revenue Code.

August 2, 1999

Dear:

This is in response to your letter dated June 21, 1999, in which you requested information as to the availability of a tax exemption for foster children, presumably for application in arriving at your Illinois income tax liability. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you stated the following:

"I would like to know if you have taxes exemptions for foster children. Because I here that you do, but my caseworker said that she do not know of any. I am a foster mother to five children and I would like to find out if you have one."

Response

The Illinois Income Tax Act (35 ILCS 5/101 et seq.; the "IITA") provides a standard exemption allowance in computing Illinois net income equal to the personal exemptions allowable to a taxpayer in a given taxable year on the taxpayer's federal income tax return. See IITA section 204(a) and (c). In the event a taxpayer did not file a federal income tax return, the exemption allowance is equal to the number of personal exemptions a taxpayer would have taken on a federal return had she filed one. See IL-1040 Instructions, pg. 14. Accordingly, it is at the federal level that the determination is made as to whom may be claimed as a dependent for exemption purposes.

Under Internal Revenue Code section 151(c)(1)(B) (the "IRC"), a taxpayer is allowed an additional exemption for each dependent who is a child of the taxpayer that is either under the age of 19 or a student under the age of 24. A foster child in the care of a taxpayer shall be treated as a child of the taxpayer and included as a dependent provided that for the entire year, in addition to the above, the foster child (i) lives in and maintains as her principal place of abode the taxpayer's home, (ii) is a member of the taxpayer's household, and (iii) receives over half her support from the taxpayer. See IRC section 152(a)(9) and (b)(2), Treas. Reg. section 1.152-1(b). Therefore, to the extent a taxpayer is allowed additional exemptions for foster children in computing her federal taxable income, the taxpayer may likewise take such exemptions in determining her Illinois net income.

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As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Jackson E. Donley
Senior Counsel-- Income Tax